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Attorneys for Petitioner
New Jersey Propane Gas Association

In Re Petition concerning the
applicability of the One Call
Damage Prevention System to the
New Jersey Propane Gas Industry

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

VERIFIED PETITION

Petitioner, New Jersey Propane Gas Association ("NJPGA"),
by way of Verified Petition, states:

BACKGROUND

1. NJPGA is a non-profit organization representing retail propane companies in the State of New Jersey. It is comprised of over 111 members. NJPGA's mission is to educate the public, the media, the industry and legislative and government officials as to the safety and efficiency of propane and related products as well as to represent the interests of its member companies on issues common to the industry. Its offices are located at The Princeton House, 160 West State Street, Trenton, New Jersey, 08608.

2. This Petition concerns the "One Call Damage Prevention

System'' (''One Call''), established pursuant to N.J.S.A. 48:2-73 et seq. (the ''Act'') and N.J.A.C. 14:2-1.1 et seq. (the ''Regulations'').

3. The One Call legislation was enacted to create ''a single Statewide notification system which would receive notice from excavators of intended excavation or demolition activities [(''tickets'')] and then transmit those notices to operators of underground facilities in the area of proposed excavation or demolition.'' Assembly Transportation and Communications Committee Statement, Assembly, No. 36-L.1994, c.118.

4. A One Call system operator is designated to receive tickets on behalf of operators and determines, through screening software, whether an operator's underground facility falls within the area of excavation warranting a mark-out.

5. Under One Call, affected operators are required to mark the location of their facilities within three days of receiving the information regarding an excavator's notice (''mark-outs''). N.J.S.A. 48:2-80; N.J.A.C. 14:2-6.1.

6. Although (a) propane storage tanks are not used for the conveyance or transportation of gas and therefore do not fall within the definition of ''Underground Facility'' as defined by the Act and Regulations and (b) One Call was designed to address

issues arising from the unique characteristics of a public utility, the BPU has unilaterally determined the Act and Regulations should apply to the propane gas industry.

7. Furthermore, the BPU does not administer One Call as required by the Act and Regulations, by allowing excavators to issue tickets for non specific locations resulting in an undue administrative and financial burden on NJPGA members.

COUNT 1

8. NJPGA repeats and realleges the prior paragraphs of this Verified Petition.

9. N.J.S.A. 48:2-80 and N.J.A.C. 14:2-6.1 require, among other things, operators of an "Underground Facility" to participate in and comply with One Call.

10. The Act defines "Underground Facility" as "any public or private personal property which is buried, placed below ground or submerged on a right-of-way, easement, public street, other public place or private property and is being used or will be used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, or traffic control, or for the transportation of hazardous liquid regulated pursuant to the "Hazardous Liquid Pipeline Safety Act of 1979" . . . , but does

not include storm drains or gravity sewers.'" N.J.S.A. 48:2-75;
N.J.A.C. 14:2-2.1 (emphasis added).

11. Underground storage tanks utilized by customers of NJPGA do not convey or transport gas; they are solely used for storage.

12. Therefore, underground storage tanks as they relate to the New Jersey propane industry do not fall within the definition of "Underground Facility" and were not intended by the Legislature to be covered by the Act or Regulations.

WHEREFORE, Petitioner requests a declaration from the BPU that One Call will not apply to the propane industry.

COUNT 2

13. NJPGA repeats and realleges the prior allegations in this Verified Petition.

14. One Call was designed to address the unique characteristics of a public utility and cannot be efficiently applied to private, self-contained fuel supply installations associated with the usage of propane.

15. From an operational standpoint, propane systems are vastly different from public utilities accounting for the ineffective application of One Call to the propane industry.

16. The differences between traditional public utilities

(natural gas, electric, water and telephone) and the propane industry include, but are not limited to, the following:

a. Utilities operate in clearly defined service areas; the propane industry is a competitive industry where companies overlap in the areas where they provide service and some have customers scattered throughout the State.

b. Unlike utilities' systems, propane systems contain a finite supply of fuel with valves that are manually operable at a tank that is easy accessible to customers, emergency response personnel, the fuel supplier and the on-site contractor in the event of a problem. In addition, a propane gas system utilizes 1/2 to 3/4 inch diameter service lines operating at 10 lbs. of pressure, which are much smaller and under markedly less pressure than those used by natural gas lines.

c. Utilities' systems and facilities are fixed in place and designed to be permanent; propane facilities change as customers move or change distributors.

d. With regard to location, utilities are virtually all located within the public right of way along public thoroughfares whereas propane tanks are located on private property (any excavation done on private property is typically initiated by the property owner who is aware of the propane

tank).

e. With respect to issues wholly inapplicable to the transmission or distribution of services by a public utility, ownership of propane systems vary greatly depending on distributor and can be owned by the customer, distributor or both; customers can also choose among many independent retailers often resulting in multiple propane suppliers on the same streets.

17. One Call, therefore, cannot be effectively applied to the propane gas industry as further illustrated in the ratio of tickets issued to actual mark-outs in Count 3 below.

18. The application of One Call to the propane industry results in an administrative and financial burden to NJPGA members without fulfilling the intent of the New Jersey State Legislature in enacting the One Call legislation.

19. The propane industry is similar in infrastructure and distribution to that of the home heating oil industry. BPU staff has determined that One Call does not apply to the home heating oil industry.

WHEREFORE, Petitioner requests a declaration from the BPU that One Call will not apply to the propane industry.

COUNT 3

19. NJPGA repeats and realleges the prior paragraphs of this Verified Petition.

20. N.J.S.A. 48:2-82(b)(4) requires an excavator to provide a "specific site location." N.J.S.A. 48:2-75 defines "site" as the "specific place ... identified by street address ..., as well as by lot and block number, if available." Regulations adopted by the BPU implementing One Call, and specifically, N.J.A.C. 14:2-2.1, contain an identical definition of "site."

21. Upon information and belief, the One Call system operator fails to require excavators to provide "specific site locations" as required by N.J.S.A. 58:2-82(b)(4) and N.J.A.C. 14:2-4.1(f)(4).

22. By way of example, tickets are routinely issued for "0" street name as a location, such as "0 North Parkway" and "0 State Highway 23 South".

23. Propane installations are limited to specific, discreet customer locations and, therefore, general references to a roadway are not helpful to a propane company trying to identify whether it is the owner or operator of any underground facilities implicated by the mark-out request.

24. By way of further example, for the period of March 1 through March 18, 2001, one member was issued 634 tickets

resulting in only 14 mark-outs; another member was issued 81 tickets resulting in only 2 actual mark-outs during March 2001; and yet another member was issued 1531 tickets resulting in only 32 mark-outs during March 2001.

25. By letter dated January 18, 2001, NJPGA (through its counsel), on behalf of its members, advised BPU Staff that the BPU was not complying with its statutory and regulatory duties in administering One Call. See Letter to John Valeri from Samuel G. Destito dated January 18, 2001 attached as Exhibit A.

26. By letter dated May 10, 2001, NJPGA (through its counsel), on behalf of its members, following months of failed negotiations with BPU staff, advised the Acting President of BPU that the BPU continues to operate One Call contrary to statutory and regulatory requirements. See Letter to Carol Murphy from Samuel G. Destito dated May 10, 2001 attached as Exhibit B.

27. In addition to numerous teleconferences with the BPU staff from January 2001 to present, meetings between NJPGA and the BPU staff took place on November 17, 2000, April 20, 2001, May 14, 2001, August 8, 2001 and April 29, 2002 to discuss the burden of One Call on the propane industry as currently operated.

28. To date, despite NJPGA's repeated requests to the BPU

to require compliance by One Call with the terms of the Act regarding ``specific site locations,`` the BPU has failed to act.

29. Due to the failure by the One Call system operator to require excavators to provide ``specific site locations`` as required by N.J.S.A. 58:2-82(b)(4), up to 98% of all ``Intent to excavate`` tickets issued to NJPGA members do not result in actual mark-outs resulting in a significant cost to various members of NJPGA.

30. By way of example, three NJPGA members were charged in the aggregate, \$91,400 from September through December 2000 or approximately \$23,000 per month, relating in large part to the receipt of tickets that did not result in actual mark-outs.

WHEREFORE, Petitioner requests that the BPU implement measures sufficient to comply with its statutory and regulatory obligations in connection with its administration of One Call in order to provide operators tickets based on site specific locations, including block and lot number as required by statute and regulation.

Respectfully submitted,

WINDELS MARX LANE & MITTENDORF, LLP
Attorneys for Petitioner

New Jersey Propane Gas Association

By: _____

Samuel G. Destito

Dated: October __, 2002

VERIFICATION

I, Michael Merrill, do hereby verify as follows:

1. I am _____ of Suburban Propane, a member of the New Jersey Propane Gas Association. I have full authority to execute this verification on behalf of Petitioner.

2. I have personal knowledge of the facts alleged in the verified complaint. Such facts within my personal knowledge are true. As to facts not within my personal knowledge, I have conferred with other individuals who conducted investigations of those facts and they have been confirmed to me to be true.

3. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Michael Merrill

Dated: September ____, 2002